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Supreme Court of the United States

OCTOBER TERM, 19

No. [redacted] 134

WILLIAM A. ALBAUGH, *Petitioner*,

v.

WILLIAM P. ROGERS, Attorney General of the United States, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the District of Columbia Circuit, dated May 11, 1959, affirming the judgment of the District Court for the District of Columbia, entered February 6, 1959, dismissing petitioner's complaint seeking to have Executive Order No. 10728 declared unconstitutional and the respondent restrained from conducting fund-

raising campaigns for private charitable organizations in pursuance of the order.

The judgment of the District Court is found on page 8 of the record on appeal. The judgment of the Court of Appeals is found on page 7a of Appendix B.

OPINIONS

No opinion was rendered by the Court of Appeals for the District of Columbia Circuit or by the District Court for the District of Columbia.

JURISDICTION

The judgment of the Court of Appeals was entered on May 11, 1959 (App. 7a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

Whether any citizen has a right to contest an Act of the Federal Government which is invalid.

ORGANIC LAWS INVOLVED

The Organic Laws involved are: Declaration of Independence; Constitution Art. I, Sec. 9(7); Constitution Art. II, Sec. 1-3; Constitution Art. VI; Constitutional Amendment, Art. IX; and Constitutional Amendment, Art. X. These Organic Laws are found in Appendix A (pp. 1a-3a).

STATEMENT OF THE CASE

Relying upon 28 U.S.C. 1331 the petitioner William A. Albaugh filed on November 7, 1958 a complaint (R. 1) in the United States District Court for the District of Columbia seeking to have Executive Order No. 10728 Establishing The President's Committee

On Fund-Raising Within The Federal Service (R. 3) declared unconstitutional and to have respondent restrained from using Public Funds in conducting fund-raising campaigns among Federal employees on duty where the monies collected as a result of the campaigns were to be delivered to various private charitable organizations until such time as this particular use was authorized by Congress.

The petitioner, standing upon his rights as a citizen, alleged that the respondent was subject to Executive Order No. 10728 as Head of the Department of Justice and must see that voluntary fund-raising within his department was conducted in accordance with the policies, principles, and procedures prescribed by or pursuant to this order; that the order necessitated the use of Public Funds in conducting fund-raising campaigns among federal employees on duty where the monies collected as a result of the campaigns were to be delivered to various private charitable organizations; and that there was no Constitutional Law nor Congressional Act which authorized this use of Public Funds.

The respondent did not answer the complaint within the time permitted by law.

The District Court on February 6, 1959 entered a judgment (R. 8) granting respondent's motion to dismiss the complaint on the grounds that "the complaint fails to state a claim upon which relief may be granted, in that the plaintiff has no standing to sue" (R. 6).

On May 11, 1959 the Court of Appeals entered a judgment (App. B, p. 7a) granting respondent's motion to affirm (App. B, p. 3a).

ARGUMENT AMPLIFYING REASON RELIED ON FOR GRANTING THE WRIT

Petitioner respectfully submits that this Court should settle whether any citizen has a right to contest an Act of the Federal Government which is invalid.

Previously the Court has never had before it a case involving an invalid Act of the Federal Government being contested by a citizen claiming no special injury. In *Massachusetts* v. *Mellon*, 262 U. S. 447, the Court volunteered the following dictum upon which the respondent relies:

> "The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained some direct injury as a result of this enforcement and not merely that he suffers in some indifferent way in common with people generally."

To establish a rule concerning invalid Acts, the Court must have before it a case involving an invalid Act. Whenever the Court takes official notice that it has before it an invalid Act, the Court is bound by its oath to protect the Constitution to immediately nullify the invalid Act. Therefore the only rule that the Court can establish relating to invalid Acts is that they will be nullified as soon as they are brought before the Court.

In this case the question of whether Executive Order No. 10728 is invalid remains unanswered. The respondent has failed to produce any Constitutional Law or Congressional Act which would specifically authorize fund-raising campaigns for private charitable organizations. The respondent has failed to show that soliciting Government employees for private charitable organizations will reasonably make those

employees better able to perform their regularly assigned duties. The respondent has failed to produce any delegated Governmental function which would be reasonably implemented by this solicitation program.

Lacking both specific authorization and reasonable justification on the basis of general efficiency, Executive Order No. 10728 falls into direct conflict with Constitutional Amendment, Art. X (App. A, p. 3a) and is an invalid Act.

CONCLUSION

WHEREFORE, it is respectfully submitted that the petition for a writ of certiorari as prayed for should be granted.

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June 1959